City of Culver City, California

City Council Agenda Item Report

Meeting Date: 12/22/08	Item Number: C-4
AGENDA ITEM: Adoption of a Resolution for Employer Pick Up to Allow the City to Continue Implementing the Provisions of Section 414(h)(2) of the Internal Revenue Code Pursuant to Section 20691 of the California Government Code.	
Contact Person/Dept.: Jeff Muir, Chief Financial Officer	Phone Number: (310) 253-5865
Fiscal Impact: Yes [] No [X]	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [ ]	Attachments: [X]
Public Notification: Master E-Mail Notification List (12/18/08)	
Department Approval: Jeff Muir (12/12/08)	City Attorney Approval: Carol Schwab (by H. Baker) (12/17/08)
Fiscal Impact Review: Jeff Muir (12/12/08)	City Manager Approval: Jerry B. Fulwood (12/17/08)

RECOMMENDATION:

Staff recommends the City Council adopt a resolution for Employer Pick up to allow the City to continue implementing the provisions of Section 414(h)(2) of the Internal Revenue Code (IRC) pursuant to Section 20691 of the California Government Code.

BACKGROUND:

In a CalPERS Circular Letter dated October 3, 2008, the City was informed of an action that needs to take place by December 31, 2008. IRC Section 414(h)(2) allows public agencies to designate required employee contributions as being "picked-up" by the employer and treated as employer contributions for tax purposes. The effect of a pick-up is to defer tax on employee contribution amounts until the member retires and receives retirement benefits, or separates from employment and takes a refund of contributions. Absent the 414(h)(2) provision applicable to governmental plans, employee contributions to a defined benefit pension plan qualified under Section 401(a) would automatically be after-tax contributions (e.g., taxable income to the employee at the time the contribution is made). Revenue Ruling 2006-43 provides, in general, that an employee contribution will not be treated as "picked-up" under IRC Section 414(h)(2) unless:

1. The employer specifies that the contributions, although designated as employee contributions, are being paid by the employer (this action must be memorialized in writing); and,

2. The employer does not permit participating employees to opt out of the pick-up or to receive the contributed amounts directly instead of having them paid by the employer to the plan.

Revenue Ruling 2006-43 allows employers who do not have written evidence of a pick-up, but their actions show that they intended to establish and carry out a pick-up, to be treated as meeting the requirements of IRC Section 414(h)(2) for past pre-tax contributions if the employer takes formal action in writing prior to December 31, 2008 with respect to future pick-up contributions. Approval of this resolution will provide the necessary documentation to meet the federal tax reporting requirements outlined in Revenue Ruling 2006-43 and provides the City with the authority to implement the provisions of IRC Section 414(h)(2).

DISCUSSION:

In order to ensure our ongoing compliance with federal tax reporting requirements and avoid any complications with payroll reporting to CalPERS, it is imperative that the City Council adopt this resolution. Failure to adopt the resolution and provide the documentation to CalPERS will result in the City's records being rejected until the documentation is received.

FISCAL ANALYSIS:

Approving the authorizations will not increase City costs. The approval confirms the elections currently in place in language prescribed by CalPERS to meet their and IRC 414(h)(2) requirements.

ATTACHMENTS:

1. Proposed Resolution.
2. CalPERS Circular Letter 200-049-08.

MOTION:

That the City Council:

Adopt a resolution for Employer Pick up to allow the City to continue implementing the provisions of Section 414(h)(2) of the Internal Revenue Code pursuant to Section 20691 of the California Government Code.